



Attorney Docket No. P64053US0

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Brigitte FALCONNIER

Via Facsimile
703-872-9306

Application No.: 09/423,665

Art Unit: 1761

Filed: November 22, 1999

Examiner: Curtis Edward SHERRER

For: NOVEL CLEAR BEVERAGE OPTIONALLY ALCOHOLIC CONTAINING ANETHOL
AND CLOUDY DILUTED BEVERAGE OBTAINED BY DILUTION**NOTICE OF APPEAL AND
REQUEST FOR REFUND OF ASSOCIATED FEE**Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the instant notice, transmitted by facsimile, Appeal is taken from the rejection of the claims set forth in the Office Action mailed December 2, 2003. The \$330.00 fee for this notice is attached. Should the fee become detached, or if additional fees are due with respect to this notice, please charge Deposit Account No. 06-1358.

The instant notice of appeal is filed without prejudice to Applicant's rights in connection with Applicant's paper filed April 2, 2004, requesting reconsideration of the finality of the Office Action mailed December 2, 2003, and the refusal to enter the after-final amendment, filed December 31, 2001, as requested in the continued prosecution application (CPA) filed February 28, 2002, and requesting, accordingly, a new Office Action reflecting examination of the claims as so amended.

No official action on the aforesaid request for reconsideration has been received. However, Applicant's undersigned representative was informed – during a telephone discussion with Examiner Milton I. Cano on June 2, 2004, confirmed in a paper that the Examiner sent by facsimile on June 2, 2004 – that finality of the Office Action would be withdrawn, but the time period for reply would not be restarted and Applicant must reply within the time period set in the final Office Action, which reply must address the grounds of rejection as set forth in the final Office Action. Neither the

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Examiner, nor the facsimile confirmation subsequently sent by the Examiner, gave any clear indication whether the after-final amendment (requested in the CPA, as explained above) would be entered pursuant to Applicant's request for reconsideration.

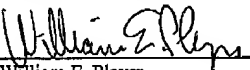
During a subsequent telephone conversation with Examiner Curtis Sherrer on June 2, 2004, Examiner Sherrer informed Applicant's undersigned representative that a Notice of Appeal (or other appropriate after-final paper) would still need to be filed on June 2, 2004, the non-extendable (statutory) deadline for responding to the final Office Action. Although finality of the Office Action would be withdrawn (as explained above), Examiner Sherrer indicated that the withdrawal was not yet *official*, since it had not been mailed.

Accordingly, refund of the \$330 fee for the Notice of Appeal is requested; that is, had the request for reconsideration, filed April 2, 2004, been timely acted on, filing the Notice of Appeal and payment of the \$330 fee would not have been necessary. For the record, Applicant's representatives requested timely action on the request for reconsideration by telephone on or about April 27, 2004, May 27 and 28, 2004, and June 1, 2004.

Respectfully submitted

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By:


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WEP/bap